MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2022 / 2023

UIS4612 – LAW OF INSOLVENCY

(All Sections / Groups)

03 JULY 2023

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Insolvency Act 1967; (ii) Insolvency Rules 2017; (iii) Insolvency Voluntary Arrangement Rules 2017; (iv) Companies Act 2016; (v) Companies (Winding-up Rules 1972 (incorporating latest amendments); (vi) Companies (Corporate Rescue Mechanism) Rules 2018 and (vii) Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Jamie runs a nutrition club at Kampung Lima, Melaka which provides healthy breakfast and weight management programme to her customers. Jamie obtained a loan sum of RM250,000-00 only from Bank Kaya Berhad to expand her business with the condition that her husband Jackson must become the surety for this loan sum. The said loan amount has been fully disbursed to Jamie. Meanwhile, under the respective agreement, Jamie is also given sixty days credit facility by Life Sihat Enterprise who is Jamie's supplier for the shake powder which will be used in preparing milkshake for healthy breakfast.

Initially, Jamie made regular monthly repayments to Bank Kaya Berhad. Due to the economic downturn and Jamie's lack of experience in retail business development management, her business started to dwindle and Jamie started to suffer losses in her business. Jamie could not keep up the repayments to Bank Kaya Berhad. It defaulted the monthly instalments. Bank Kaya Berhad sent a demand to Jamie and Jackson and demanded to pay all outstanding sums due to Bank Kaya Berhad. Meanwhile, Jamie's credit facility to Life Sihat Enterprise remained unpaid for more than three months. The total debts owed by Jamie to Bank Kaya Berhad amounts to RM200,000-00 only whilst the sum of RM150,000-00 only is due to Life Sihat Enterprise.

Subsequently, a civil suit was initiated against Jamie and Jackson by Bank Kaya Berhad. A final judgment was entered against them for the sum of RM200,000-00 on 6 June 2022. Until 4 July 2022, the said debt remained unpaid by Jamie and Jackson although the said judgment was personally served on Jamie and Jackson on 7 June 2022.

A bankruptcy notice was then issued and served against Jamie on 18 July 2022 (Monday) at 4.00 p.m. The bankruptcy notice stated that Jamie must pay Bank Kaya Berhad the sum of RM200,000-00 with interest at 5% per annum from the date of judgement to date of realisation and costs of RM5,000-00 within seven days after the service of the bankruptcy notice. As the debt and interest stated in the bankruptcy notice remained unpaid and no counterclaim was filed by Jamie, Bank Kaya Berhad filed a bankruptcy petition in the Melaka High Court on 28 July 2022. Bankruptcy order was entered against Jamie on 12 September 2022. The bankruptcy order was also served personally on Jamie on 13 September 2022.

In reliance of the guarantee given by Jackson to Bank Kaya Berhad, Bank Kaya Berhad also issued a bankruptcy notice on 18 July 2022 to Jackson to demand the sum of RM200,000-00 with interest at 5% per annum from the date of judgement to date of realisation and costs of RM5,000-00 within seven days after the service of the bankruptcy notice but without the indorsement on the said bankruptcy notice. Meanwhile, Bank Kaya Berhad sent the bankruptcy notice to Jackson by way of email method.

Upon becoming aware that bankruptcy action was taken against Jamie and Jackson by Bank Kaya Berhad, Life Sihat Enterprise intends to start their respective civil claims against Jamie to recover their respective debts from Jamie.

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Meanwhile, Jamie had in fact performed several transactions as follows:

8 March 2022 - transfer a piece of land measuring one acre in area which was registered under Jamie's name situated in Petaling Jaya, Selangor to one Janice. Janice is Jamie's eldest sister for consideration of RM5,000-00 only. Janice then in turn sold this land to one Mr. Blur on 24 October 2022 for a sum of RM5 million only.

17 October 2022- transfer her bungalow house which was registered under Jamie's name situated in Kajang, Selangor to one Ms. Duit.

Analyse the following:

(i) Whether Jamie and Jackson have any grounds to oppose the bankruptcy proceedings.

(12 marks)

(ii) The legal status of the various transfers and conveyances of properties made by Jamie.

(8 marks)

(iii) How should Life Sihat Enterprise proceed to claim for the recovery of their respective debts as Jamie and Jackson have been adjudged as a bankrupt.

(5 marks)

(Total: 25 marks)

QUESTION 2

Datin KY is a famous cosmetics entrepreneur in Malaysia who owns many businesses in both locally and abroad. To expand the business, KY Cantik Sdn. Bhd. which is currently located at Petaling Jaya, Selangor decided to borrow RM1 million from Bank Money Berhad ('BMB'). Datin KY is one of the directors of KY Cantik Sdn. Bhd. together with her husband Dato' KC executed a joint and several guarantee in favour of BMB guaranteeing the repayment of the abovesaid RM1 million loan sums.

However, KY Cantik Sdn. Bhd. defaulted on the repayment of the said RM1 million, BMB filed a civil suit in the Shah Alam High Court and on 10 March 2022, BMB obtained a summary judgment in the sum of RM1 million with interest as per the loan agreement signed between KY Cantik Sdn. Bhd. and BMB as well as Dato' KC and Datin KY.

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KY Cantik Sdn. Bhd., Dato' KC and Datin KY filed an appeal against the decision of the Shah Alam High Court and the appeal is still pending. However, pursuant to the abovesaid summary judgment, BMB issued a statutory demand dated 10 June 2022 to KY Cantik Sdn. Bhd., demanding payment of RM1 million within 14 days from the date of the statutory demand. On the same day, the said statutory demand was handed to Mr. Mimpi, a staff at the front desk of KY Cantik Sdn. Bhd. However, Mr. Mimpi did not hand over the said statutory demand to Dato' KC and Datin KY and as such KY Cantik Sdn. Bhd. failed to pay within the specified period and never responded to the said statutory demand. Meanwhile, BMB also caused a bankruptcy notice to be issued on Dato' KC and Datin KY on 10 June 2022.

On 27 June 2022, BMB presented a winding up petition against KY Cantik Sdn. Bhd. and bankruptcy petition against Dato' KC and Datin KY. However, KY Cantik Sdn. Bhd. raised a ground to set aside the winding up petition on the grounds that they are not insolvent as they have assets which, if realised would enable them to pay the debt.

(i) Analyse the issues in the above scenario in respect of the proceedings taken against KY Cantik Sdn. Bhd. together with Dato' KC and Datin KY.

(20 marks)

(ii) In order not to affect the operation business of KY Cantik Sdn. Bhd., the other shareholders of KY Cantik Sdn. Bhd. then met at a shareholders' meeting and decided to raise the money needed to pay off the judgment sum to BMB directly but each of the shareholders needed time to do so. Examine whether KY Cantik Sdn. Bhd. can accept any payment from the other shareholders of the company to settle the debt on behalf of the company, Dato' KC and Datin KM and to pay off the judgment sum to BMB directly?

(5 marks)

(Total: 25 marks)

QUESTION 3

Teguh Berhad ('Teguh') had supplied raw materials of the construction materials worth RM400,000-00 to Maju Berhad ('Maju') on 15 May 2021. Maju had paid RM40,000-00 in advance as security deposit of the transaction. Upon delivery of the raw materials, Maju had paid another RM150,000-00 as part payment of the transaction. Maju had failed to pay Teguh the full payment. On 2 September 2021, Teguh issued a statutory notice of demand, requesting Maju to pay RM450,000-00 together with interest calculated until the date of notice, within twenty-one days.

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The notice was sent by registered post to Maju's nearest branch office on the same day. Maju ignored the notice and failed to pay within the specified period. On 16 March 2022, Teguh presented a winding up petition against Maju on the ground that Maju was unable to pay its debts.

An affidavit verifying the petition was filed four days before the petition. The said petition was served on Maju's solicitor, Mr. Edwin at his legal firm. Teguh posted the petition on their website, Facebook, Instagram and Twitter. While waiting for the hearing in April 2022, Teguh approached En. Faruq, as the potential liquidator for Maju. En. Faruq refused to accept the offer due to his tight schedule.

Maju wishes to oppose the statutory notice of demand and the winding up petition. Maju also argued that it was not insolvent since it has assets which if realised, will be able to pay off the debt as its company value is currently worth RM7 million.

Illustrate to Maju whether it has any grounds to oppose the statutory notice of demand and the winding up petition.

(Total: 25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

On 15 March 2018, Aero Darat Sdn. Bhd. ('Aero Darat') obtained judgment for the sum of RM600,000-00 with interest and costs against Super Wing Sdn. Bhd. ('Super Wing'). No appeal was filed against the judgment by Super Wing. A schedule for payment of the judgment sum was agreed between Aero Darat and Super Wing. However, as Super Wing did not honour the settlement agreement, Aero Darat proceeded to file a winding up petition dated 10 January 2020 under section 465 (1)(e) of the Companies Act 2016 after issuing a final letter of demand dated 10 October 2019.

Iskandar Shah, a contributory of Super Wing filed a Notice and affidavit in opposition seeking a stay of the winding up on the grounds that:

(i) Super Wing is not insolvent as it has surplus assets which if realised would be sufficient to pay the judgment debt;
(ii) Aero Darat has a security in the form of debenture and must exercise its remedies under the debenture first;
(iii) Super Wing has in fact performed its obligations under the settlement agreement with the payment of RM500,000-00 in full and final settlement of the judgment debt; and
(iv) If the winding up order is made there will be no surplus left for distribution amongst the contributories.

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Illustrate whether a contributory may oppose the creditor's winding up petition and the merits of the application.

(Total: 25 marks)

OR

QUESTION 4 (b)

White Bowl Sdn. Bhd. ('White Bowl') is the only manufacturer of the local "bone China and dinnerware materials" of Malaysia since 1960. Post Covid-19, on May 2022, the Board of Directors decided to expand and diversify their products to include crockery items of earthenware or chinaware such as plates, cups and saucers, pots and vases. However, since then, White Bowl has been facing financial problems. The Board of Directors are now divided in the direction in which to proceed and there is disagreement amongst them. Two (2) of the directors, Florence Wan and Ben Wah who are also the majority shareholders propose a resolution to wind up White Bowl. Man Tan who is also a director and a minority shareholder is opposed to the members voluntary winding up of White Bowl. Man Tan is of the opinion that White Bowl's present financial problems are the result of mismanagement by Florence Wan and Ben Wah which can be corrected.

You as the solicitors of White Bowl, demonstrate to Man Tan the options available on process of corporate rescue mechanisms to White Bowl and the course of action that Man Tan could pursue.

(Total: 25 marks)

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